

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF  
  
DISCIPLINARY PROCEEDINGS

**CHRISTY L. BIERSTEKER, R.N.,**  
  
RESPONDENT

**FINAL DECISION AND ORDER**  
  
Case No. LS 9909153 NUR

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**PARTIES**

The parties to this action for the purposes of s. 227.53 Stats., are:

*Christy L. Biersteker, R.N.*  
*411 E. Factory Street*  
*Seymour, WI 54165*

*Attorney John R. Zwieg*  
*Division of Enforcement*  
*P. O. Box 8935*  
*Department of Regulation & Licensing*  
*Madison, WI 53708-8935*

**PROCEDURAL HISTORY**

A hearing in the above-captioned matter was held on November 3, 1999, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney John R. Zwieg. The Respondent, Christy L. Biersteker, did not appear.

The Administrative Law Judge filed his Proposed Decision on December 13, 1999. Complainant filed his objections to the Proposed Decision on December 28, 1999, and Respondent's response to the objections was filed on January 4, 2000. The board considered the matter on January 5, 2000.

Based on the entire record of this case, the board makes the following Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

1. Christy L. Biersteker, R.N., Respondent, date of birth January 21, 1956, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 113617, which was first granted September 24, 1993.
2. Respondent was also licensed by the Wisconsin Board of Nursing as a licensed practical nurse (LPN) in the state of Wisconsin pursuant to license number 28260, which was first granted November 27, 1985. Respondent has not renewed her LPN license since it expired on April 30, 1995, but could renew it pursuant to § 440.08(3)(a), Stats. and Wis. Adm. Code § N 5.03(2) by payment of fees.
3. Respondent's last address reported to the Department of Regulation and Licensing is 411 E. Factory Street, Seymour, WI 54165.

4. From May 1997 until her resignation on February 18, 1999, Respondent was employed by the State of Wisconsin Department of Corrections (DOC) as a registered nurse in the Health Services Unit (HSU) at the Green Bay Correctional Institution (GBCI), a maximum security prison, in Green Bay, Wisconsin.

5. During the time Respondent was employed as a registered nurse at GBCI, Respondent provided nursing services in the HSU to Inmate A, a 26 year old male who was incarcerated at GBCI.

6. DOC's "Executive Directive 16: Fraternalization Policy", (Hereinafter, "Fraternalization Policy") which was in effect at the time Respondent was employed at GBCI, is a work rule policy that governs fraternization between employees and inmates.

7. The Fraternalization Policy is intended to, "eliminate any potential conflict of interest or impairment of the supervision and rehabilitation provided by Department employees for inmates, adult and juvenile offenders in correctional settings."

8. Respondent acknowledged in writing by an Employee Statement of Acknowledgment, (Hereinafter, "Acknowledgment") executed on May 21, 1997 to receiving a copy of the Fraternalization Policy. Respondent read the Fraternalization Policy when the Acknowledgement was signed.

9. Paragraph 2 of the Acknowledgment provides in part, "I understand that it is my responsibility to report any possible conflicts with the policy [Fraternalization Policy] to my supervisor. If necessary, I will request an exception to the policy. [Fraternalization Policy]" *emphasis added*.

10. The Fraternalization Policy defines prohibited relationships to include:

"4. extending, promising, or offering any special consideration or treatment to an inmate, adult or juvenile offender;

5. having personal contacts (other than those required by the employee's job duties) such as communicating through verbal or written means or being in a social or physical relationship with an inmate, adult or juvenile offender;

6. providing or receiving goods and/or services with or without remuneration for or to inmates, adult or juvenile offenders;"

11. In January and February, 1999 Respondent provided nursing services to Inmate A on a regular basis. Prior to that time Respondent and Inmate A had established a personal relationship, which was prohibited under the prison's non-fraternization policy. The only time they would see each other was when Respondent was supposed to be providing nursing services to Inmate A.

12. On February 11, 1999 Inmate A called Respondent at her unlisted, unpublished home telephone number, and Respondent accepted the charges for the call. Among other things, in that conversation:

a. Respondent was not surprised to receive the call from Inmate A.

b. Inmate A said he received a letter from Respondent the previous day, and she confirmed she had received a letter from him the previous day.

c. Inmate A asked Respondent what she was wearing and Respondent said that she was wearing a shirt. Inmate A said "I guess this is one of those times you don't feel like having your brassier (sic) on" and Respondent confirmed that was so.

d. Several times Respondent told Inmate A that she loved him. Inmate A said that he loved Respondent.

e. Inmate A, using the euphemism "she" for female genitalia, asked Respondent how "she" was doing that morning. Respondent using the same euphemism responded that "she" was still tired. Inmate A then asked if there was "any chance that she might need anything sometime soon." Respondent answered that "She always does . . ." Then they talked about anticipation and that it would take a little more persuasion.

f. Inmate A, using the euphemism "he" for male genitalia, asked if Inmate A and "he" were on her mind and Respondent answered that they were on her mind and that she would miss both Inmate A and "he" that day.

13. The morning of February 16, 1999 Inmate A called Respondent at her unlisted, unpublished home telephone number, and Respondent accepted the charges for the call. Among other things, in that conversation:

a. Inmate A addressed Respondent as "Precious".

b. Inmate A asked how Respondent was doing and then using the euphemism for female genitalia asked how "she" was doing. Respondent answered "all right" to each inquiry.

c. Respondent told Inmate A that all she had on was a long shirt and Inmate A said "Just a long shirt, is it getting hot in here, or is it just me." This is an indication that he was becoming sexually excited because of Respondent's description of what she was wearing, and not wearing.

d. Inmate A then described to Respondent a scenario in which:

i. Respondent returns home from work and Inmate A is there waiting for Respondent.

ii. Inmate A takes off her shoes and soaks and massages Respondent's feet.

iii. Inmate A is cooking Respondent's dinner for her.

vi. Inmate A runs the water for a nice hot bubble bath, undresses Respondent, carries her to the bathroom and places her in the bath tub which is lit only by the surrounding candles.

v. Inmate A brings Respondent her dinner on a tray and pours Respondent some champagne.

vi. Inmate A washes Respondent's back, legs and "her", and strokes Respondent's muscles.

e. Then Inmate A asked Respondent what she would say if, in the scenario, he asked if it would be all right for him to join her in the tub. Respondent responded in the affirmative.

f. Inmate A then continued describing the scenario, and asked: "Okay, I undress, climb, in the bath tub with you put you between my legs just hold you and rub you sip a little champagne you know we talk, after the water gets a little cold, we get out I dry you off, pick you up take you to the bedroom, pull the sheets and lay you down and right away after I cover you up behind you hop into the bed and just hold you in my arms real close to my chest and just stroke your hair until you fall asleep. Would you like that or did I miss something." Respondent answered: "Well, a little thing."

h. Inmate A laughed and said: "You wouldn't mind closing like that I mean just holding you. I mean it don't have to be about love, intimacy all the time you know just holding and you know making sure your relaxed that's about it. Does that sound about right?" Respondent answered: "I guess."

i. Inmate A asked Respondent whether she had seen his last letter and she confirmed that she had.

j. The conversation ended with Inmate A stating that he would see Respondent and each saying that they loved the other.

14. In a letter to Respondent dated February 23, 1999, Inmate A wrote:

"You still my precious, right? Even though this forbidden love we share is no longer a secret, I will cherish every moment we had together. The kisses, the smiles, holding hands, the touching, the z z, you know what I'm saying right (smile)"

15. Respondent and Inmate A kissed, while he was her patient at GBCI.

16. Respondent violated the Fraternization Policy by having a non-excepted relationship with Inmate A consisting of engaging in non-work related communication with Inmate A.

17. Respondent violated the Fraternization Policy by having a non-excepted relationship with Inmate A consisting of receiving two non-work related telephone calls from inmate A.

18. Respondent violated the Fraternization Policy by having a non-excepted relationship with Inmate A consisting of writing one non-work related note to inmate A.

19 Respondent violated the Fraternization Policy by having a non-excepted relationship with Inmate A consisting of receiving approximately ten non-work related notes from inmate A.

20. Respondent violated the Fraternization Policy by receiving money from Inmate A to transfer via money order to Inmate B's prison account, at Inmate A's request.

21. A few days before February 18, 1999, at GBCI, Inmate A gave Respondent \$1040, in the form of ten \$100 bills and two \$20 bills that were individually crumpled and in bad condition. Respondent knew that inmates at GBCI were not allowed to have paper money. Inmate A told Respondent that the money belonged to Inmate B and asked Respondent to obtain a money order so that the money could be placed in Inmate B's account at GBCI.

22. The morning of February 18, 1999, Respondent:

- Purchased a cashier's check in the amount of \$1030 from a bank in Ashwaubenon, Wisconsin, using the

- money Inmate A had given to Respondent.
- Falsely identified the remitter of the check as Joycelynn Reynolds and had the check made payable to Inmate B.
- Mailed the cashiers check to Inmate B in an envelope which Respondent had addressed to Inmate B at GBCI with a return address as Joycelynn Reynolds in Milwaukee.

### **CONCLUSIONS OF LAW**

1. The Wisconsin Board of Nursing has jurisdiction over this matter, pursuant to s. 441.07, Stats.
2. The conduct described in the Findings of Fact constitutes unprofessional conduct within the meaning of s. 441.07(1), Stats., and s. N 7.04, (intro.) Code.
3. Respondent, by engaging in the telephone conversations of February 11 and 16, 1999, engaged in inappropriate sexual behavior with a patient and has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(11) and is subject to discipline pursuant to § 441.07(1)(d), Stats.
4. Respondent, by kissing Inmate A, engaged in inappropriate sexual contact and behavior with a patient and has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(11) and is subject to discipline pursuant to § 441.07(1)(d), Stats.

### **ORDER**

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Respondent's license for the practice of nursing in Wisconsin be **SUSPENDED** for a period of at least two years, effective immediately.

**IT IS FURTHER ORDERED** that Christy L. Biersteker's right to renew her license as a licensed practical nurse in the state of Wisconsin is hereby **SUSPENDED** for a period of at least two years, effective immediately.

**IT IS FURTHER ORDERED** that Respondent may petition the Board for the termination of the suspension of her registered nurse license and the right to renew her license as a licensed practical nurse, after two years, under the following terms and conditions:

- a. Respondent shall, at her own expense, have undergone an assessment by a mental health care provider experienced in assessing health care providers who violated professional boundaries with patients
- b. The practitioner performing the assessment must have been approved by the Board, or its designee, with an opportunity for the Division of Enforcement to make its recommendation, prior to the evaluation being performed.
- c. Respondent must provide proof sufficient to the Board that Respondent can practice with reasonable skill and safety of patients and public.
- d. If the Board determines to end the suspension, Respondent's license shall be limited in a manner to address any recommendations resulting from the assessment, including, but not limited to:
  - i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.
  - ii. Additional professional education in any identified areas of deficiency.
  - iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor.
- e. Respondent shall appear before the Board on an annual basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

**IT IS FURTHER ORDERED** that costs of this proceeding shall be assessed against the Respondent.

### **EXPLANATION OF VARIANCE**

The board has accepted those Findings of Fact recommended by the Administrative Law Judge (ALJ), but has

supplemented those findings, based upon uncontested evidence in the record, in order to more fully establish the nature of the violations found. The board has also supplemented the ALJ's Conclusions of Law consistent with the additional findings made. Finally, the board has altered the ALJ's recommended Order in three respects. First, the period of suspension is increased from a period of one year to a period of at least two years. Second, the board has also suspended Respondent's right to renew her expired license to practice practical nursing for that same period. Third, the board has placed conditions on Respondent's right to renew the license at the end of the minimum period of suspension. The basis for these variances in the Findings of Fact and Conclusions of Law are as follows:

*Finding of Fact 2. Respondent was also licensed by the Wisconsin Board of Nursing as a licensed practical nurse (LPN) in the state of Wisconsin pursuant to license number 28260, which was first granted November 27, 1985. Respondent has not renewed her LPN license since it expired on April 30, 1995, but could renew it pursuant to § 440.08(3)(a), Stats. and Wis. Adm. Code § N 5.03(2) by payment of fees.*

These facts are alleged in the Complaint and admitted by Respondent's Answer. It is undisputed that Respondent was also licensed by the Board of Nursing as a licensed practical nurse (LPN) in the state of Wisconsin pursuant to license number 28260. It is also undisputed that although Respondent has not renewed her LPN license since it expired on April 30, 1995, she could renew it.

It is necessary for the Board to make these findings so that the discipline imposed by the Board can also prohibit Respondent from renewing her LPN license during the time of the suspension of Respondent's RN license. If the Board does not do so, Respondent will be able to renew and practice under her LPN license while her RN license is suspended.

*Finding of Fact 11. In January and February, 1999 Respondent provided nursing services to Inmate A on a regular basis. Prior to that time Respondent and Inmate A had established a personal relationship, which was prohibited under the prison's non-fraternization policy. The only time they would see each other was when Respondent was supposed to be providing nursing services to Inmate A.*

*Finding of Fact 12. On February 11, 1999 Inmate A called Respondent at her unlisted, unpublished home telephone number, and Respondent accepted the charges for the call. Among other things, in that conversation:*

- a. Respondent was not surprised to receive the call from Inmate A.*
- b. Inmate A said he received a letter from Respondent the previous day, and she confirmed she had received a letter from him the previous day.*
- c. Inmate A asked Respondent what she was wearing and Respondent said that she was wearing a shirt. Inmate A said "I guess this is one of those times you don't feel like having your brassier [sic] on" and Respondent confirmed that was so.*
- d. Several times Respondent told Inmate A that she loved him. Inmate A said that he loved Respondent.*
- e. Inmate A, using the euphemism "she" for female genitalia, asked Respondent how "she" was doing that morning. Respondent using the same euphemism responded that "she" was still tired. Inmate A then asked if there was "any chance that she might need anything sometime soon." Respondent answered that "She always does . . ." Then they talked about anticipation and that it would take a little more persuasion.*
- f. Inmate A, using the euphemism "he" for male genitalia, asked if Inmate A and "he" were on her mind and Respondent answered that they were on her mind and that she would miss both Inmate A and "he" that day.*

*Finding of Fact 13. The morning of February 16, 1999 Inmate A called Respondent at her unlisted, unpublished home telephone number, and Respondent accepted the charges for the call. Among other things, in that conversation:*

- a. Inmate A addressed Respondent as "Precious".*
- b. Inmate A asked how Respondent was doing and then using the euphemism for female genitalia asked how "she" was doing. Respondent answered "all right" to each inquiry.*
- c. Respondent told Inmate A that all she had on was a long shirt and Inmate A said "Just a long shirt, is it getting hot in here, or is it just me." This is an indication that he was becoming sexually excited because of Respondent's description of what she was wearing, and not wearing.*
- d. Inmate A then described to Respondent a scenario in which:*
  - i. Respondent returns home from work and Inmate A is there waiting for Respondent.*
  - ii. Inmate A takes off her shoes and soaks and massages Respondent's feet.*
  - iii. Inmate A is cooking Respondent's dinner for her.*
  - vi. Inmate A runs the water for a nice hot bubble bath, undresses Respondent, carries her to the bathroom and places her in the bath tub which is lit only by the surrounding candles.*
  - v. Inmate A brings Respondent her dinner on a tray and pours Respondent some champagne.*

vi. Inmate A washes Respondent's back, legs and "her", and strokes Respondent's muscles.

e. Then Inmate A asked Respondent what she would say if, in the scenario, he asked if it would be all right for him to join her in the tub. Respondent responded in the affirmative.

f. Inmate A then continued describing the scenario, and asked: "Okay, I undress, climb, in the bath tub with you put you between my legs just hold you and rub you sip a little champagne you know we talk, after the water gets a little cold, we get out I dry you off, pick you up take you to the bedroom, pull the sheets and lay you down and right away after I cover you up behind you hop into the bed and just hold you in my arms real close to my chest and just stroke your hair until you fall asleep. Would you like that or did I miss something." Respondent answered: "Well, a little thing."

h. Inmate A laughed and said: "You wouldn't mind closing like that I mean just holding you. I mean it don't have to be about love, intimacy all the time you know just holding and you know making sure your relaxed that's about it. Does that sound about right?" Respondent answered: "I guess."

i. Inmate A asked Respondent whether she had seen his last letter and she confirmed that she had.

j. The conversation ended with Inmate A stating that he would see Respondent and each saying that they loved the other.

*Conclusion of Law 3. Respondent, by engaging in the telephone conversations of February 11 and 16, 1999, engaged in inappropriate sexual behavior with a patient and has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(11) and is subject to discipline pursuant to § 441.07(1)(d), Stats.*

Respondent testified that she had an unpublished unlisted telephone number. She also testified that she had to accept the charges for the calls in order for them to be connected [Hearing Exhibit 14, at page 47].

The two telephone conversations of February 11 and 26, 1999, between Respondent and Inmate A were recorded and transcribed by the Department of Corrections. The full transcripts [Hearing Exhibits 5 and 6] are a part of the record herein. Neither Respondent nor Inmate A contended that the transcripts were inaccurate.

The transcripts of the two telephone conversations indicate that Respondent and Inmate A were willing to talk about each other's genitalia in a casual and familiar manner. The conversations were obviously intended to sexually excite or arouse the participants, and the board considers such conversations to be sexual behavior within the meaning of sec. N 7.04(11), Code, which defines as unprofessional conduct, "Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient." While it is clear that a sexual telephone conversation, which takes place with one participant in prison and the other in her home, can not be engaging in sexual "contact" or "exposure," it is equally clear that such a telephone conversation can constitute engaging in sexual "gratification" "or other sexual behavior" with a patient.

*Finding of Fact 14. In a letter to Respondent dated February 23, 1999, Inmate A wrote:*

*"You still my precious, right? Even though this forbidden love we share is no longer a secret, I will cherish every moment we had together. The kisses, the smiles, holding hands, the touching, the 2 2, you know what I'm saying right (smile)"*

*Finding of Fact 15. Respondent and Inmate A kissed, while he was her patient at GBCI.*

*Conclusion of Law 4. Respondent, by kissing Inmate A, engaged in inappropriate sexual contact and behavior with a patient and has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(11) and is subject to discipline pursuant to § 441.07(1)(d), Stats.*

Based upon their opportunity to be alone, the romantic nature of their relationship and Inmate A's statement in his letter to Respondent that he cherishes their kisses, which Respondent never corrected in contacts with him, the Board concludes that Respondent and Inmate A did kiss, and such activity constitutes a further violation of sec. N 7.04(11), Code.

*Finding of Fact 21. A few days before February 18, 1999, at GBCI, Inmate A gave Respondent \$1040, in the form of ten \$100 bills and two \$20 bills that were individually crumpled and in bad condition. Respondent knew that inmates at GBCI were not allowed to have paper money. Inmate A told Respondent that the money belonged to Inmate B and asked Respondent to obtain a money order so that the money could be placed in Inmate B's account at GBCI.*

*Finding of Fact 22. The morning of February 18, 1999, Respondent:*

- Purchased a cashier's check in the amount of \$1030 from a bank in Ashwaubenon, Wisconsin, using the money Inmate A had given to Respondent.
- Falsely identified the remitter of the check as Joycelynn Reynolds and had the check made payable to Inmate B.
- Mailed the cashier's check to Inmate B in an envelope which Respondent had addressed to Inmate B at GBCI with a return address as Joycelynn Reynolds in Milwaukee.

Respondent admits these additional Findings of Fact, and they are included to further describe the nature of the conduct involved in assisting Inmate A to launder money he possessed illegally in the prison.

The variance from the ALJ's recommended Order involves three principal modifications. First, the Order suspends Respondent's right to renew her license to practice as a practical nurse for the period of the suspension of her

R.N. license. The purpose is to prevent her from simply renewing her L.P.N. license and resuming her practice of nursing during the period in which her R.N. license is suspended. Second, the Order increases the period of suspension of the license to at least two years and, finally, the Order provides for possible limitations at such time as Respondent applies for reinstatement.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968).

In terms of deterrence, Respondent’s misconduct in this case is intentional misconduct and not simply negligence in practice. Respondent knew such behavior was prohibited and she knew or should have known that there was a potential that her conduct would be harmful to the staff and inmates, but proceeded with the conduct despite that knowledge. It may not be possible to deter unintended conduct. Intentional misconduct can be deterred. A suspension of at least two years is considered necessary to meet the deterrence objective.

In terms of Respondent’s rehabilitation, a requirement that Respondent submit to an assessment following the minimum period of suspension will permit the board to make an informed judgment whether Respondent is ready to safely and competently return to practice, and will permit the board to impose whatever limitations are necessary to ensure that the public health and safety is protected, including required therapy, remedial education, or practice limitations.

Dated this 18th day of January, 2000.

STATE OF WISCONSIN

BOARD OF NURSING

by\_\_\_\_\_

Ann Brewer, R.N.

Chair